THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12553 OF 1998

ORAL ORDER:

This writ petition is filed challenging the validity of the Special Rules called the Andhra Pradesh Indian Medicine and Homoeopathy Subordinate Service Special Rules made under G.O.Ms.No.551, Health Medical and Family welfare (I.1) department, dated 29.10.1994, to the extent of para 7(a) and 9(a), relating to the appointment and training of the Compounders in Unani medicine.

The petitioner claims to be an Association called All India Unani Tibbi Conference, a registered society, which is interested in the development of Unani system of medicine. It is pleaded that as per G.O.Ms.No.444, Medical and Health Department, dated 8.8.1986, under which the Government of Andhra Pradesh had started a project for training of Compounders in Ayurveda, Unani and Homoeopathy system of medicine with one year course, the examinations were required to be conducted by the 3rd respondent-Nizamia Tibbi College, Charminar, Hyderabad. As per the said G.O.Ms.No.444, dated 8.7.1986, the medium of instruction for Ayurveda shall be Telugu, and for Unani the medium of instruction shall be Urdu. While so, the impugned G.O.Ms.No.551, dated 29.10.1994, was issued framing Special Rules for the Andhra Pradesh Indian Medicine and Homoeopathy Subordinate Services in supercession of all the orders issued earlier. Under the impugned Rules the recruitment of Compounders shall be either by direct recruitment or by transfer, as stated in para 7(a).

It is contended in this writ petition that the system of appointment, as prescribed in para 7(a), is contrary to letter and spirit of G.O.Ms.No.444, dated 8.7.1986, as well as the policy of the Central Council of Indian Medicine. It is also contended that under G.O.Ms.No.551, candidates can be appointed without any consideration of their medium of instruction in the qualifying

examination, and after such appointment, training would be given. It is alleged that such procedure would frustrate the entire scheme of training of Compounders in Unani medicine. The petitioner contends that the candidates so appointed would not be in a position to follow the syllabus, terminology of medicine, potentiality and the effect of the drugs, since the Medical Officers appointed in Unani Dispensaries, who were imparted their education with Urdu medium, would write prescriptions in Urdu with Arabic, Persian and Urdu terminology. It is contended that the procedure for recruitment of Compounders at the first instance and then sending them for training under the impugned Rules is arbitrary and illegal. Hence, the impugned Rule is liable to be struck down.

I have heard the learned counsel for the petitioner, and perused the material on record.

Under the impugned G.O.Ms.No.551, dated 29.10.1994, Special Rules have been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. It is relevant to note that a One Man Commission was appointed by the Government, as announced under G.O.Rt.No.4433 dated 4.12.1986, to comprehensively examine, review and update the existing Rules for the various posts under the State Government. The Commission was also requested to frame Rules for the posts for which there are no existing Rules. Accordingly, the One Man Commission after thorough discussion with the Director (Commissioner), Indian Medicine and Homeopathy and all the concerned persons and keeping in view the observations of the Pay Revision Commission on Service Rules, submitted its report. Accepting the same Special Rules were made under the impugned G.O.Ms.No.551, dated 29.10.1994. Rule 3 of the said Rules prescribes the method of appointment of the Compounders of Unani medicine by direct recruitment as well as by transfer of persons in the last grade service. It was made clear that 80% of the substantive vacancies in the category 7(a) i.e., Compounders shall be filled in by direct recruitment and the remaining

20% shall be filled up by appointment of transfer of persons in the last grade service.

The law is well settled that the Special Rules made in exercise of the power conferred by the proviso to Article 309 of the Constitution of India have a statutory force. Such Rule can be struck down by the Courts only on such grounds as may invalidate a legislative measure such as violation of Article 14 and 16 of the Constitution of India.

In the case on hand, it is not the case of the petitioner that the impugned Rules are made without any authority. The petitioner has also failed to make out a case that the impugned Rules resulted in an unreasonable classification among the equals and thus discriminatory.

The only contention raised that the appointment of candidates without consideration of their medium of instruction in the qualifying examination and the procedure prescribed for sending the candidates for training after their recruitment is not in the interest of Indian System of Medicine, particularly Unani appears to be a misapprehension of the petitioner. The fact that the impugned Rules were issued in the year 1994 and that the same are being implemented for the past more than 12 years without any complaint itself shows that the apprehension of the petitioner is without any basis. At any rate, the Rules made under the proviso to Article 309 cannot be held to be unreasonable or unconstitutional on such allegation. In case of any irregularities in proper implementation of the Rules it is always open to the petitioner to work out the appropriate remedy as available under law. However, the Rule itself cannot be struck down on such ground.

For the aforesaid reasons, the writ petition is devoid of any merit and the relief as prayed for cannot be granted.

Accordingly, the writ petition is dismissed. No costs.

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(G. ROHINI, J.)

August 2, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12553 OF 1998

2nd August, 2006.

Between:

All India Unani Tibbi Conference (Regd.)
Branch of A.P. having its office at Panja Shah,
Hyderabad, represented by its President –
Hakeem Mir Mujafar Alikhan. .. Petitioner.

And

The Government of Andhra Pradesh Medical and Health,
Represented by its Principal Secretary, Secretariat
Buildings, Hyderabad and four others. .. Respondents.